K 1952

File No. 0. Evacuees/52 Pt. II

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Evacuee's (Administration of Property) Act 1949

(For previous pps. pl. see Pt. I).

P=18
E

File No. 0. Evacuees/52 Pt. II

Gen. 194

190-A

CONTENTS.

Legal Department. File No. 0. Evacuees/52. Pt. II.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Evacuees (Administration of Property) Act, 1949.	
1.	O.No. 341 12/1/52.	Secs. 30, 31 — Whether prosecution should be launched for making the partnership deed and dissolution deed after the Bom. Evacuee (Administration of Property) Act, 1949 came into force.	1-5.
2.	O.No. 4490 20/4/52.	Sec. 12 — Lease having been executed before 7/4/1947 cannot be cancelled under — a covenant to renew lease runs with land, hence Custodian will have to grant renewal of lease.	5.
3.	O.No. 2048 20/5/52.	Sections 17(1), 10(2)(m) Payment of sales tax from immovable property of evacuee estate.	9.
4.	O.No. 10311 20/6/1952	Sec. 8(4) — Since there is no reservation of any portion of the property as Wakf Custodian can require trustees to transfer possession of the trust property to him.	11-13.
5.	O.No. 11378 10/7/52.	The decree of e-viction of the Court cannot be executed against the Custodian, who is in possession of the sub-lessee property, as he was not made a party to the suit.	25-26.
6.	O.No. 11905 19/7/52.	Sec. 32 — As the notifn. exempting cash deposits of individuals in banks from the operation of the Ordinance is not inconsistent with the provisions re-enacted, the same would continue in force.	27.
7.	O.No. 889-Compl. 19/6/52.	Sections 30, 31 and 35 — Prosecution of Ibrahim Abobakar under —	29-31.

Bole.M.S.

CONTENTS.

Legal Department File No. C. Evacuees/52. Pt. II.

Sr. No.	Compilation No.	Subject	Pages.
8.	C.No. 16729/A 10/9/1952.	Since the property has vested in Custodian it would not be possible for Govt. to dispute the right of Messrs. A.A. Karim Bros. in the property.	33.
9.	C.No. 1082/A-Compl. 17/10/52.	Sec. 52 -- Prosecution under the section for offence under	35.
10.	C.No. 16742/A 10/10/52.	Sections 4,17,10(2)(m) The amount due under the award of the Industrial Tribunal would fall under Sec. 10(2)(m) and the Custodian can pay the amount under the award.	37-41.

Bale.M.S.

MB
1326

Office of the R. L. A.

Section 31 of the Administration of Evacuee Property Act, 1950, requires a wilful concealment of property which the person knows or has reason to believe to be evacuee property. Section 30 also requires that the person concerned should have knowledge or have reason to believe the property to be evacuee property. The burden in a criminal case will naturally be heavey upon the State unlike in the inquiry under the Act. If there be circumstances which are consistent with the innocence of the accused, a criminal court would be reluctant to fasten instead upon those which are consistent with his guilt. The case will turn upon the true nature and purpose of the documents. The preparation of the documents, namely, the partnership deed and the dissolution deed can be explained consistently with the necessity of giving legal shape to something which was already in existence; and the mere circumstance that these documents were ex post facto and were made even after the Bombay Evacuee (Administration of Property) Act, 1949, came into force would not then be conclusive. Statements made by Ibrahim in 1950 appear to be consistent with the position as it then obtained, and besides the prevarication in those statements cannot be used against him in any criminal trial. In these circumstances and in view of the fact that the property purpose of the administration of Evacuee Property Act has been already served, it does not seem advisable to launch a prosecution against Ibrahim. In view of the shifting statements of Ibrahim in connection with the part played by Messr. Amarchand & Mangaldas, no case of

abetment can be sustained against them. Similarly, Ibrahim's statements read together do not make out a case for perjury against him also.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 541 , dated the 12th January 1952.

Office of the R. L. A.

The lease in question having been executed on 7th April 1947 cannot be cancelled under section 12 of the Administration of Evacuee Property Act, 1950 (Additional Secretary's Opinion No. 17656, dated the 7th November 1951), and is saved by that Act. As stated in the note of the Custodian of Evacuee Property's Office, a covenant by the lessor to renew a lease is a covenant running with the land (Secretary of State vs. Volkart Brothers, 50 Madras 595; Mulla's Transfer of Property Act, 4nd Edition, page 616). Hence such a covenant is binding on any person in whom the property is vested for the time being. Since there hasbeen no breach of the terms of the lease by the lessee who has applied in time for the renewal of the lease, there would not appear to be any option but to grant a renewal for a period of ten years as provided in the lease.

Id/-

Remembrancer of Legal Affairs.

W.R. to Office of C.E.P. No. 6420 ,

Dated the 26th April 1952.

The arrears of sales tax are recoverable as arrears of land revenue under the provisions of sections 12 and 12-1A of the Bombay Sales Tax Act, 1946. The arrears of land revenue can no doubt be recovered by sale of the d efaulter's immovable property under section 155 of the Bombay Land Revenue Code, 1879, and under section 13 of the Bombay City Land Revenue Act, 1876. However, section 17(1) of the Administration of Evacuee Property Act, 1950, would come in the way of the sale of immovable property by this method; for, it provide -s that save a s otherwise provided in this Act, no porperty which is vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a court or of any other authority, and no injunction in respect of any such property shall be gtanted by any court or other authority. Although the sale of immovable property is not thus possible, it is one of the duties of the Custodian under section 10(2)(m) of the Act to incur any expenditure including the payment of taxes, duties, cesses and rates to Government. The Custodian General has taken the right view regrding the difference between the sales tax and the income-tax in the sense that the dealer has already recovered the sales tax from the consumers, which should be an additions -l reason why he should not retain that tax but pass it on to Government. There is no reason why the payment of sales tax should be confined only to liquid assets. The sale of immovable property is permissible with the previous approval of the Custodian General (see section 10(2)(o)), and for payment of sales tax such approval ought to be granted a s a matter of course, if no other assets are available out of which the tax can be paid

On these lines the matter may be taken up with the Custodian General.

Id/-

Remembrancer of Legal Affairs.

U.R. to F.D. No. 9048 , dated the 30th May 1952.

Office of the R. L. A.

Evacuee Property Administration of Evacuee Property Act, 1950.

Under the Mussalman Wakf Validating Act, it is lawful for a person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of the Mussalman Law, for the following among other purposes :-

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) when the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his life-time or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as religious, pious or charitable purpose of a permanent character (see sec.197, Mahamedan Law by Mulla.

It would be seen from the terms of the Trust deed that the ultimate benefit is not preserved for any religious, pious or charitable purpose. The Settlor, Shri Abdul Karim, who has executed the deed has conveyed the property to the trustees for holding it on trust for himself and it is directed that after his death, the property shall be sold and the sale proceeds be distributed amongst his heirs. There is thus no reservation of any portion or residue of the property for any purpose recognized by Mussalman law as a religious, pious or charitable purpose and in the circumstances, the

trust created is not a wakf.

4. As the trust is not a wakf, the next question really does not survive. As, however, the beneficiary is an evacuee, his interest vests in the Custodian and The Custodian will be entitled to manage the trust property in the same manner as any other evacuee property and as there is only one beneficiary, the Custodian will be entitled to require the Trustees to transfer possession of the trust property to him under section 56 of the Indian Trusts Act, 1882, and under section 8(4) of the Administration of Evacuee Property Act, 1950, if he desires such possession necessary.

Id/-

18/6

Remembrancer of Legal Affairs.

U.R. to R.H.D.No. 10311 , dated the 20th June 1952.

10995 of 3-6-1952.

Submitted.

By a Notification dated 24-9-1949 the business of the Muslim Flag Islami Restaurant and the tenancy rights in the premises of the Restaurant belonging to one Hussein-bin-Hussein, an evacuee; were notified as evacuee property. The landlord of the premises on which the Restaurant is situate had in 1948 filed a suit for ejectment of the tenants (including the evacuee) as he wanted to replace the katcha structure by a pucca construction. A decree in favour of the landlord has been passed by the Small Causes Court, Bombay, on 5th June 1950. The landlord is now seeking to recover possession of the premises in execution of the said decree. The question is whether the Custodian of Evacuee Property is required to submit to the decree. The Controller of Evacuee Property's Office states (p-1) that as the decree for possession was passed after the notification of the premises as evacuee property it is capable of execution in view of section 17 of the Administration of Evacuee Property Act, 1950. The R.L.A. is requested to advise.

Office of the R. L. A.

One Sulemanji Mahomedalli Arsiwalla who owned an open plot of land on Sheikh Burhan Street had leased it on monthly tenancy to one Hasanbhai Umer. It appears that the lessee sub-divided the plot and let out the sub-plots to 11 different persons. Kacha structures were erected on the plots. One such sub-lessee was Hussein Bin Hussein, proprietor of the Muslim Flag Islami Restaurant, who has since left for Pakistan. In June 1948 the Landlord filed an ejectment suit in the Court of Small Causes at Bombay on the ground that the land was bona fide required by him for the erection of a new residential building (clause (i) of sub-section (1) of section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947). He also urged that the lessee was charging excessive rent in respect of the plots sub-let. Pending the suit Hussein Bin Hussein (one of the sub-lessees referred to above) left for Pakistan and the Muslim Flag Islami Restaurant was notified as vesting in the Custodian (Notification dated 24-9-1949). The Custodian was not however made a party to the suit. On 5th June 1950 the Court passed the decree of eviction as prayed for. On the strength of that decree the landlord is now asking for possession of the property in the custody of the Custodian. The question raised is whether the decree can be executed against the Custodian.

2. Since the land leased out by the landlord was open, he was entitled to recover possession thereof under section 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on the ground that he wanted to erect a new residential building thereon. The decree of the Court would appear to be unassailable on that ground. But the failure to bring the Custodian of

Evacuee Property on record since the property of the Muslim Flag Restaurant was notified on 24th September 1949 as vesting in him would come in the way of the execution of the decree so far as the Custodian is concerned. Under section 48 of the Presidency Small Causes Courts Act, 1882, in all proceedings under Chapter VII (regarding recovery of possession of immovable property) the Small Cause Court is required to follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure. Under Order 21 in the First Schedule to the Civil Procedure Code execution can be applied for only against a judgment debtor. Since the Custodian was not made a party to the suit no such application can lie. In these circumstances the best course for the Custodian would be to inform the landlord that as he was not a party to the suit he is not bound by the decree.

Id/-

9/7

Remembrancer of Legal Affairs.

U.R. to the Custodian of Evacuee Property No. 11378,

dated the 10th July 1952.

Office of the R. L. A.

Exemption of cash deposits in Banks.

Administration of Evacuee Property Act, 1950.

The question for consideration of the R.L.A. is whether the notification No.107/Cus/50, dated the 23rd January 1950 issued by the Ministry of Rehabilitation under section 49 of the Administration of Evacuee Property Ordinance, 1949, exempting cash deposits of individuals in banks from the operation of the Ordinance continues to be in force under the Administration of Evacuee Property Act, 1950.

2. The answer is in the affirmative. The notification in questionwas issued after the definition of property in section 2(1) of the Ordinance of 1949 was amended by Ordinance No. IV of 1950. Later the whole Ordinance was replaced by the Administration of Evacuee Property Act, 1950, and the provisions of section 49 of the Ordinance were re-enacted as section 52 of the Act. As the notification is not inconsistent with the provisions re-enacted, the same would continue in force and would be deemed to have been made or issued under the provisions so re-enacted in view of the provisions of section 24 of the General Clauses Act, 1897.

Id/-
7/7

Remembrancer of Legal Affairs.

U.R. to C.E.P.Office, No.11905, dated the 19th July 1952

Office of the R. L. A.

Administration of Evacuee property Act, 1950. Prosecution under - of Shri Ibrahim Aboobakar.

This case was discussed with Shri. S. Benjamin, Deputy Custodian of Evacuee Property, Bombay, who pressed the view before the R.L.A. that the series of transactions from beginning to end in this case was intended for the purpose of screening the property and for illegally receiving the income thereof. Attention was also invited to the fact that the Custodian of Evacuee property in terms held Shri Ibrahim Aboobakar liable to prosecution under the provisions of the Administration of Evacuees' Property Act, 1950 and tht there has been no appeal against the order of the Custodian in this behalf.

2. In R.L.A's opinion No. 841 dated the 12th January 1952 all the points which could be urged in favour of Shri Ibrahim Aboobakar were considered with a view to decide whether a prosecution will be successful. However, if the stand is to be taken that the series of transactions was intended for a particular purpose and that all along fraud and falsity existed the case takes a different colour. It must be said that there is prima facie evidence to suggest that the so-called partnership deed, and the dissolution thereof were intended primarily for the purpose of supporting the representation that the property was not evacuee property and for enabling Shri Ibrahim Aboobakar to take the income thereof. For that purpose the prevarications made by Shri Ibrahim Aboobakar in his statement would also be of use; as also the sequence of the time in relation to the coming into force of the enactment concerned at which the various steps were taken by

way of partnership deed and the dissolution thereof. The circumstance that Shri Ibrahim Aboobakar has accepted the finding of the Custodian regarding the evacuee character of the property would also be relevant} as also the Custodian's specific finding that criminal liability arises in repsect of the transactions.

Having regard to all the circumstances of the case the R.L.A. would have no objection if a prosecution is instituted on the basis of the entire series of transactions for the offences under sections 30, 31 and 33 of the Administration of Evacuees' Property Act, 1950.

The R.L.A., would, however, like to add that it would be difficult to establish a case against the Solicitors.

Id/-
18/6
Remembrancer of Legal Affairs.

U.R. to R.H.D., No.579-Coml., dated the 19th June 1951

Office of the R.L.A.

Evacuee Property

Government of India Act, 1935, Sect. 175(3)

Constitution Article 299(1).

Under section 175(3) of the Government of India Act, 1935, all contracts and assurances of property were required to be executed only on behalf of the Governor by such person and in such manner as he might direct or authorise. Similar provision is contained in Article 299(1) of the Constitution of India. In the present case the assurance of property has not been executed at all. Consequently, no right or interest in the property in the absence of such assurance could be deemed to have been created in favour of Messrs. A.A. Karim Bros.Ltd. It is true that Messrs. A.A. Karim Bros. have paid the price of the land and Government has agreed to sell it to them. However, the payment of the price would not create any interest in the land, but only a right to enforce the contract. In these circumstances, even though there is no assurance of property executed on behalf of the Governor, it would be possible for Messrs A.A. Karim Bros. to sue Government for the specific performance of the agreement, namely, the execution of a Conveyance in their favour. The property has, however, been notified under section 7(3) of the Administration of Evacuee Property Act, 1950, and thereby under section 8 of the Property has already vested in the Custodian of the State. No steps seem to have been taken under Chapter IV of the Act to get the property released. Consequently, it would not be possible for Government to dispute the right or interest of Messrs. A.A. Karim Bros. Ltd., in the property. If Government desires that a part of the property should be sold to NIMCO the proper course would be to obtain the sanction of the Custodian-General.

Sd/-
8/9

Remembrancer of Legal Affairs.

U.R. to R.D., No. 14729/A, dated the 10th Sept. 1952.

Office of the R.L.A.

The materials on record do not make out a prima facie case against Shrimati Fatmabai for an offence under section 32 of the Administration of Evacuee Property Act 1950. To charge her with liability under that section it must be proved either that she wilfully destroyed or caused damage to the evacuee property or that she unlawfully converted it to her own use. From the papers which have been sent by the Police, all that has been found against her is that some of the moveable articles removed between 27-11-1949 and 1-11-1950 from the house which has been declared evacuee property were found on or about 6-12-1950 in a room on the second floor of Shrimati Fatmabai's house. In her statement recorded before the police (page 65 ante), she has stated that she was in 'iddat' (seclusion on account of husband's death) and that one Jainabbhai who is now in Pakistan, had during her 'iddat' asked for that room. Shrimati Fatmabai is not alleged to have taken any part in the removal of the articles from the evacuee house. In fact it is on record that she is in no way connected with Shri Alihussein or the evacuee Tayabally or the evacuee property itself. On these facts, no prima facie case has been made out to show that she wilfully destroyed or caused damage to the evacuee property or that she unlawfully converted it to her own use. Her prosecution would, not, therefore, be justifiable.

If this view is accepted by the Rehabilitation Department, the draft Resolution of sanction should be amended by deleting the portions bracketed in pencil. The draft is otherwise in order.

Id/-
16/10

Remembrancer of Legal Affairs

U.R. to R.H.D., No.1082/A-Confl., dated the 17th Oct. 1952.

Legal Department.

R.I. No.28532 dt. 25-9-52.

Submitted with reference to D.D. note dated 20/9/52 at pp. 1-3.

This relates to the implementation of items 15 and 22 of the award of the Industrial Tribunal made in ref. (I.T.) No.155 of 1949. The parties to the Award were the Ahmed Abdual Karim Bros.Ltd. Ambernath and the Collector of Thana and Deputy Custodian of Evacuee Property on one side and the workmen employed under the said concern on the other. The Deputy Custodian of Evacuee Property in whom the concern vests under the provisions of the Administration of Evacuee Property Act has shown unwillingness of implement the Award unless he obtains instructions, in that behalf, from the Custodian General. In the meanwhile the workers have requested Govt. for early payment of their dues under the Awards. The H.L.A. is requested to advise whether -

(i) having regard to the provisions of the Administration of Evacuee Property Act it would be possible to recover the amounts due to the workers under the award as arrears of land revenue under sec. 20(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950 and

(ii) If not, what remedy is, now open to the workers to obtain their dues.

Section 4 of the Administration of Evacuee Property Act, provides that the provisions of that Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 17 thereof further provides that save as otherwise expressly provided in this Act, no property which has vested in the Custodian shall be liable to attach-

-ment, distress or sale in execution of an order of a court or of any other authority and no injunction in respect of any such property shall be granted by any court or other authority. Rule 22 made under this Act provides for special procedure to be followed by persons claiming money from the property of an evacuee and the mode of payment by th custodian. Reading these provisions together it appears clear that the recovery of the dues from the estate of M/S. Abdulal Karim Bros. Ltd. which vests in the Deputy Custodian Thana, by the employees of the concern under the award would not have to be made only in accorance with the provisions of the said Rule 22 and the only remedy of the workers would be to file their claims with the Deputy Custodian as suggested by him. Section 30(1) of the Industrial Disputes (A.T.) Act, 1950 will have no application to this case and the amount due under the award cannot be recovered as an arrear of land revenue.

Sd/-
3/10/52.

D.S. (Civil)

Office of the R.L.A.

ndustrial Disputes Appellate Tribunal) ct 1950 - Section 0(1) and the dministration of vacuee Property ct, 1950 - Sections , 10(2)(m) and 17.

It is true that under section 20(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, the amount due under the award of the Industrial Tribunal can be recovered as an arrear of land revenue, but under section 48 of the Administration of Evacuee Property Act, 1950, any sum due to the State Government or to the Custodian under the provisions of this Act can be recovered as if it were an arrear of land revenue, and the amount due under the award of the Industrial Tribunal not being any sum due to the State Government, section 48 cannot be pressed into service. The property of Ahmed Abdul Karim Brothers, Ltd., Ambernath, which is vested in the Custodian, would not be liable to be attached for recovering the amount under the award of the Industrial Tribunal in view of section 17 read with section 4 of the Administration of Evacuee Property Act. Under section 10(2)(m) of that Act it would be competent for the Custodian to incur any expenditure, including payment of taxes, duties, cesses and rates to Government or to any local authority or of any amounts due to any employee of the evacuee or of any debts due by the evacuee to any person. The amount due under the award of the Industrial Tribunal would fall under this provision and it would be competent for the Custodian to pay the amount due under the award of the Industrial Tribunal. It is true that under rule 22 of the Administration of Evacuee Property (Central) Rules, 1950, the claim under the award of the Industrial Tribunal will have to be registered. Under the Explanation to that rule, sanction of the Central Government or the Custodian General is also not required to the discharge by the Custodian of the

legitimate obligation and liabilities incurred in the ordinary course of business of a trading concern carried on by the Custodian, whether such liabilities and obligations incurred before or after the vesting of the business in the Custodian. The liability under the award of the Industrial Tribunal has arisen in the ordinary course of business of the trading of Messrs. Ahmed Abdul Karim Brothers, Ltd., and consequently, the sanction of the Central Government or the Custodian General does not appear to be necessary. It would be open to the Custodian to pay the amount under the award of the Industrial Tribunal after the claim is registered under rule 22.

2. The question whether the successors in management are also liable and if so in what manner may, if necessary, be separately pursued with Rehabilitation Department.

Sd/-
9/10.
Remembrancer of Legal Affairs.

U.R. to D.J., No. 16742/A, dated the 10th October 1952.